

**Proposed Regulatory Action on Lead in Children's Jewelry
Request for Public Comment**

**Baltimore City Health Department
August 14, 2006**

I. SUMMARY

The Commissioner of Health of Baltimore City is proposing to declare children's jewelry with excess levels of lead to be a nuisance to public health. The Commissioner of Health is requesting comments from the public and interested parties on this proposal. The comment period will end on September 29, 2006.

II. BACKGROUND

A. Legal Authority

The Health Commissioner has the legal authority to regulate health nuisances pursuant to two sections of the Baltimore City Health Code. Title 2 of the Health Code relates generally to the Department of Health, while Title 5 relates more specifically to nuisance control. *See* Health Code §§ 2-101, *et seq.* and §§ 5-101, *et seq.* Title 2 provides that the Commissioner is responsible for "enforcing all laws for the preservation of the health of the inhabitants of the City" and preventing disease and nuisances affecting public health. Health Code § 2-104. It is the duty of the Commissioner "to remove and abate nuisances...." Health Code § 2-105(5). Title 5 of the Health Code sets forth examples of nuisances and states that nuisance "includes...any other health or safety hazard." Health Code § 5-101(b). Excessive levels of lead in children's jewelry are clearly a health hazard, as described below in the fatal case of a child ingesting jewelry with excessive levels of lead. Pursuant to Title 5, "[t]he Commissioner of Health is responsible for...requiring the removal of all nuisances...." Health Code § 5-102. Thus, Titles 2 and 5 of the City Health Code provide the legal authority by which the Health Department and Health Commissioner can regulate health nuisances in the City.

B. Lead in Children's Jewelry Threatens Children's Health

The nuisance addressed by this proposed regulations is lead poisoning from lead-containing children's jewelry.

Lead is a heavy metal and potent toxin that can cause life-threatening poisoning at high doses and insidious damage at low doses. The Agency for Toxic Substances and Disease Registry of the Department of Health and Human Services has found that lead causes a range of significant adverse effects in children and adults.¹

Lead is especially toxic to the brains of young children. According to the Agency for Toxic Substances and Disease Registry, high doses of lead – which are associated with blood lead levels above 70 micrograms per deciliter – can cause children to suffer

¹Agency for Toxic Substances & Disease Registry, *Case Studies in Environmental Medicine: Lead Toxicity* (October 2000).

life-threatening encephalopathy and “lasting neurologic and behavioral damage.”² Exposure to low doses of lead has been linked to lower IQ scores, school failure, attention deficit hyperactivity disorder, and deficits in vocabulary, fine motor skills, reaction time, and hand-eye coordination.³ There is no known lower threshold for the adverse effects of lead on children’s development.⁴

The Centers for Disease Control and Prevention (CDC) has determined that an important source of lead exposure for children are consumer products. According to CDC, in some areas of the country, as many as one-third of children with lead poisoning are exposed to items containing lead that can be brought into the home. As a result, CDC recommends “restriction or elimination of nonessential uses of lead in consumer products” as part of a “proactive strategy that prevents exposure to these products and is preferable to relying on case finding to identify lead exposure hazards.”⁵

Children’s jewelry are among the most prominent consumer products that can expose children to unacceptable levels of lead. Exposure can happen via contact with the hands, direct oral contact, or ingestion.

In June 2004, CDC reported the case of a child who suffered lead poisoning from ingesting a toy necklace.⁶ On March 23, 2006, the Reebok Corporation announced that a four-year-old child in Minneapolis died from lead intoxication after swallowing a piece of children’s jewelry that was distributed with a new pair of shoes.⁷

According to the Centers for Disease Control and Prevention, the patient was brought to a hospital in Minneapolis, Minnesota for vomiting. He developed abdominal pain, dehydration, and listlessness before suffering a severe seizure and requiring mechanical ventilation. He then suffered severe brain swelling that required emergency neurosurgery. On the fourth day of hospitalization, he had no brain activity and was removed from life support. Upon autopsy, a heart-shaped pendant bearing the name

² *Id.*

³ *Id.*; American Academy of Pediatrics, *Lead Exposure in Children: Prevention, Detection and Management*, Pediatrics, 1036-1048 (October 2005).

⁴ Centers for Disease Control and Prevention, *Preventing Lead Poisoning in Young Children* (August 2005).

⁵ Centers for Disease Control and Prevention, *Death of a Child After Ingestion of a Metallic Charm – Minnesota, 2006*, Morbidity and Mortality Weekly Reports (Mar. 23, 2006).

⁶ Centers for Disease Control and Prevention, *Brief Report: Lead Poisoning from Ingestion of a Toy Necklace --- Oregon, 2003*, Morbidity and Mortality Weekly Reports, 509-511 (June 18, 2004).

⁷ Reebok, *Reebok Recalls Bracelet Linked to Child’s Lead Poisoning Death* (Mar. 23, 2006).

“Reebok” was removed from his stomach. Testing revealed the pendant to be 99.1% lead.⁸ Reebok subsequently recalled of 300,000 pieces of the jewelry.⁹

The recall was one of 16 recalls of children’s jewelry because of dangerous levels of lead in the past three years:

- On May 10, 2006, Liz Claiborne Inc, of North Bergen, New Jersey recalled about 2,800 pieces of Juicy Couture Children’s Jewelry with phrases including “Viva La Juicy” printed on the front.¹⁰
- On April 27, 2006, Selected Trading Corp. of Miami, Florida recalled about 55,000 choker-style necklaces with the phrase “in style” printed on the front.¹¹
- On March 30, 2006, American Girl Children’s Jewelry of Middleton, Wisconsin recalled 180,000 American Girl necklaces, bracelets, earrings, and hair accessories for girls.¹²
- On March 23, 2006, Dollar Tree Distribution Inc. of Chesapeake, Virginia, recalled about 580,000 necklaces and rings in a variety of designs with a toy “gem” in the center. Among the designs were “mood rings” and “glow in the dark” necklaces.¹³

⁸ Centers for Disease Control and Prevention, *Death of a Child After Ingestion of a Metallic Charm – Minnesota, 2006*, Morbidity and Mortality Weekly Reports (Mar. 23, 2006).

⁹ Consumer Product Safety Commission, *Reebok Recalls Bracelet Linked to Child’s Lead Poisoning Death* (Mar. 23, 2006) (online at <http://www.cpsc.gov/cpscpub/prerel/prhtml06/06119.html>).

¹⁰ Consumer Product Safety Commission, *Juicy Couture Children’s Jewelry Recalled for Lead Poisoning Hazard* (May 10, 2006)(online at <http://www.cpsc.gov/cpscpub/prerel/prhtml06/06160.html>).

¹¹ Consumer Product Safety Commission, *Children’s Necklaces Recalled for Lead Poisoning Hazard* (Apr. 27, 2006)(online at <http://www.cpsc.gov/cpscpub/prerel/prhtml06/06150.html>).

¹² Consumer Product Safety Commission, *Children’s Jewelry Sold at American Girl Stores Recalled for Lead Poisoning Hazard* (Mar. 30, 2006) (online at <http://www.cpsc.gov/cpscpub/prerel/prhtml06/06123.html>).

¹³ Consumer Product Safety Commission, *Dollar Tree Stores Inc. Toy jewelry Recalled for Lead Poisoning Hazard to Children* (Mar. 23, 2006) (online at <http://www.cpsc.gov/cpscpub/prerel/prhtml06/06118.html>).

- On March 23, 2006, Oriental Trading Company Inc. of Omaha, Nebraska, recalled about 25,000 beaded photo charm bracelets.¹⁴
- On February 23, 2006, Provo Craft & Novelty Inc. of Spanish Fork, Utah recalled about 29,000 metal charms, including some in the shape of pumpkins.¹⁵
- On November 30, 2005, Stravina Operating Co., LLC, Of Chatsworth California recalled about 6 million metal necklaces and zipper pulls, each bearing a child's name.¹⁶
- On September 22, 2005, Dollar General Corporation of Goodlettsville, Tennessee recalled about 455,000 necklace and earring sets with floral designs.¹⁷
- On September 22, 2005, Monogram International Inc., of Pinellas Park, Florida recalled about 145,000 Disney Princess bracelet keyrings.¹⁸
- On May 12, 2005, Dollar General Corp of Goodlettsville, Tennessee recalled about 80,000 pendants shaped as hearts.¹⁹
- On January 11, 2005, Riviera Trading Inc. of New York, New York recalled about 7,1000 metallic costume bracelets with phrases including "I like movies" and "I like sports" printed on them.²⁰

¹⁴ Consumer Product Safety Commission, *Lead Poisoning Hazard Prompts Recall of Metal Charm Bracelets* (Mar. 23, 2006) (one at <http://www.cpsc.gov/cpscpub/prerel/prhtml06/06538.html>).

¹⁵ Consumer Product Safety Commission, *Metal Charms Recalled for Lead Poisoning Hazard to Children* (Mar. 23, 2006) (online at <http://www.cpsc.gov/cpscpub/prerel/prhtml06/06093.html>).

¹⁶ Consumer Product Safety Commission, *CPSC, Stravina Operating Co. Announce Recall of Children's Metal Necklaces and Zipper Pulls* (Mar. 23, 2006) (online at <http://www.cpsc.gov/cpscpub/prerel/prhtml06/06042.html>).

¹⁷ Consumer Product Safety Commission, *CPSC, Dollar General Corp. Announce Recall of Costume Jewelry* (Sept. 22, 2005) (online at <http://www.cpsc.gov/cpscpub/prerel/prhtml05/05278.html>).

¹⁸ Consumer Product Safety Commission, *CPSC, Monogram International Inc. Announce Recall of Bracelet Keyrings* (Sept. 22, 2005)(online at <http://www.cpsc.gov/cpscpub/prerel/prhtml05/05277.html>).

¹⁹ Consumer Product Safety Commission, *CPSC, Dollar General Corp. Announce Recall of Metal Heart-Shaped Pendants* (May 12, 2005)(online at <http://www.cpsc.gov/cpscpub/prerel/prhtml05/05171.html>).

- On December 17, 2004, Raymond Geddes Co. Inc. of Baltimore, Maryland recalled about 155,000 necklaces depicting frogs, dolphins and a “sunshine smiley face.”²¹
- On July 8, 2004, four children’s jewelry importers recalled 150 million pieces of children’s jewelry sold in vending machines across America. The four firms were A&A Global Industries, Inc. of Cockeysville, Maryland; Brand Imports, LLC of Scottsdale, Arizona, Cardinal Distributing Company of Baltimore, Maryland, and L.M. Becker & Co. Inc., of Kimberly, Wisconsin. The children’s jewelry was sold between January 2002 and June 2004, at a cost of between \$0.25 and \$0.75 per item.
- On March 2, 2004, Brand Imports LLC of Scottsdale, Arizona recalled 1 million children’s rings in designs featuring hearts and stars.²²
- On Sept. 10, 2003, L.M. Becker & Co. of Kimberly, Wisconsin recalled 1.4 million toy necklaces with assorted symbols.²³

C. Action by Baltimore City Is Necessary To Protect Children

The Consumer Product Safety Commission (CPSC) is responsible for protecting children from lead poisoning from children’s jewelry. However, the Commission has failed to do so. CPSC has adopted a weak policy that permits unacceptable levels of lead to be present in children’s jewelry. Action by Baltimore City is necessary to protect children from harm.

Two federal statutes address the lead content of toys. Under the Consumer Product Safety Act, regulations ban paint containing lead in a concentration of greater than 600 parts per million.²⁴ The Federal Hazardous Substances Act bans products that

²⁰ Consumer Product Safety Commission, *CPSC, Riviera Trading Inc. Announce Recall of Children’s Costume Bracelets* (Jan. 11, 2005)(online at <http://www.cpsc.gov/cpscpub/prerel/prhtml05/05082.html>).

²¹ Consumer Product Safety Commission, *CPSC, Raymond Geddes Co. Announce Recall of Children’s Necklaces* (Dec. 17, 2004) (online at <http://www.cpsc.gov/cpscpub/prerel/prhtml05/05072.html>).

²² Consumer Product Safety Commission, *CPSC, Brand Imports, LLC Announce Recall of Children’s Rings* (Mar. 2, 2004)(online at <http://www.cpsc.gov/cpscpub/prerel/prhtml04/04090.html>).

²³ Consumer Product Safety Commission, *CPSC, L.M. Becker & Co. Inc. Announce Recall of Toy Necklaces* (Sept. 10, 2003)(online at <http://www.cpsc.gov/cpscpub/prerel/prhtml03/03178.html>).

²⁴ 16 CFR 1303.

expose children to “hazardous substances” through routine handling or reasonably foreseeable use, including ingestion.”²⁵

CPSC has the authority to implement these statutes. The agency could establish clear standards for lead content and testing to minimize the likelihood that hazardous products are ever sold. However, CPSC has not done so. Instead, it has provided wide latitude to the industry in conducting testing prior to marketing, with the result that the standardized testing can be grossly inadequate. The agency has also issued a weak and ineffective policy on the acceptable levels of lead in children’s jewelry.

Industry testing standards for toys, published by the American Society of Testing and Materials, only include a single test for lead.²⁶ This test involves bathing a scraping of the outer surface of the toy in a weak hydrochloric acid solution and assessing the lead content of the solution. It does not require an assessment of products without an outer coating. Nor does it require an assessment of the overall lead content of the product. On January 13, 2005, Congressman Henry A. Waxman wrote CPSC summarizing concerns with the industry’s testing standard.²⁷

On February 3, 2005, the CPSC announced a new policy addressing lead in children’s metal jewelry.²⁸ The new policy is premised on the claim that the “scientific community generally recognizes a level of 10 micrograms of lead per deciliter of blood ... as a threshold level of concern with respect to lead poisoning.”²⁹ This claim is wrong. CDC has concluded that “no ‘safe’ threshold for blood lead levels ... in young children has been identified.”³⁰ In fact, CDC has specifically rejected the regulatory approach used by the CPSC of modeling risk based on blood lead levels over 10 micrograms per deciliter.³¹

After starting from a false premise, CPSC’s policy sets out a weak and ineffectual approach to protecting children from lead in children’s jewelry.

²⁵ 15 USC 1261-1278.

²⁶ American Society of Testing and Materials, *Standard Consumer Safety Specification for Toy Safety* (2003).

²⁷ Letter from Congressman Henry A. Waxman to Chairman of the Consumer Product Safety Commission Hal Stratton (Jan. 13, 2005).

²⁸ Consumer Product Safety Commission, *CPSC Announces New Policy Addressing Lead in Children’s Metal Jewelry* (Feb. 3, 2005)(online at <http://www.cpsc.gov/cpscpub/prerel/prhtml05/05097.html>).

²⁹ Consumer Product Safety Commission, *Interim Enforcement Policy for Children’s Metal Jewelry Containing Lead* (Feb. 3, 2005).

³⁰ Centers for Disease Control and Prevention, *Preventing Lead Poisoning in Young Children* (Aug. 2005).

³¹ *Id.*

Under the new policy, CPSC staff first conducts a screening test to determine the “lead content of each type of component in a piece of jewelry.” If the lead content is less than or equal to 600 parts per million, then “no corrective action will be sought.”

If a piece of the jewelry exceeds the 600 parts per million threshold, then CPSC proceeds to the second step: testing using an acid extraction method. If the acid extraction yields less than or equal to 175 micrograms of accessible lead, then “no corrective action will be sought.”

If, however, a piece of the product yields more than 175 micrograms of accessible lead, then CPSC moves to the third step. In this step, staff “decides what corrective action may be appropriate on a case-by-case basis.” According to the CPSC policy, “[s]taff will consider the age of the children who are most likely to wear the jewelry, the level of accessible lead, the size and shape of the jewelry components, the probable routes of exposure and other factors.”

CPSC’s policy fails to protect children from harm. It explicitly permits an unsafe amount of lead – 175 micrograms – to be present in any single component of a single piece of children’s jewelry. As a result, a single piece of jewelry could contain significantly more than 175 micrograms. It also establishes no clear level for enforcement. A manufacturer can believe that even children’s jewelry with high levels of lead will not face any regulatory action.

Citing the failure of CPSC’s policy, Congressman Waxman and Senator Barack Obama have introduced legislation to ban lead from children’s products.³² This legislation has been endorsed by the American Academy of Pediatrics.

Since the CPSC policy announcement, there have been 11 recalls of approximately 7 million pieces of children’s jewelry because of the threat of lead exposure and one known death.

Because of the ongoing risk to children of lead in children’s jewelry, and because of the inadequacy of action by the CPSC to protect children, the Commissioner of Health proposes to declare children’s jewelry with excess levels of lead to be a nuisance. For the purpose of this regulatory action, “excess levels of lead” would mean any piece of children’s jewelry in which any component part has a lead concentration exceeding 600 parts per million. This standard mirrors the federal standard for lead in paint, which was set to be protective of children’s health.³³

³² H.R. 668 and S. 2048.

³³ 16 CFR 1303.

It is also the same standard for metal alloys in children's jewelry agreed to in a settlement between the state of California and 71 major retailers and distributors in January 2006.³⁴

The Centers for Disease Control and Prevention has stated "alternatives to lead are available" for children's jewelry.³⁵ Referring to lead in candy and other consumer products, the chief of the Lead Poisoning Prevention Branch of CDC has stated, "It is ... important to think about why is lead in any of those products, and if it doesn't need to be there, let's get it out."³⁶

If one item of children's jewelry is found to contain excess lead, there is a high likelihood of other items having excess lead. As a result, the Commissioner of Health will deem all similarly constructed and packaged items from the same manufacturer or distributor a nuisance to the public health.

II. PROPOSED REGULATION

A. Standards

The Commissioner of Health has determined that any piece of children's jewelry in which any component part has a lead concentration exceeding 600 parts per million contains excess levels of lead.

1. The Commissioner of Health has determined that any piece of children's jewelry that contains excess levels of lead is a health hazard and a nuisance. Children's jewelry is jewelry with a reasonably foreseeable use by children under age 6.
2. If an item of children's jewelry is found to contain any component with excess levels of lead, the Commissioner of Health will deem all similarly constructed and packaged items from the same manufacturer or distributor a health hazard and a nuisance.

B. Testing

³⁴ *People of the State of California vs. Burlington Coat Factory Warehouse Corporation, et al.*, Case RG 04-162075 (2006)(online at http://ag.ca.gov/newsalerts/cms06/06-009_0a.pdf?PHPSESSID=9e493493a321a5b072cf5baf0f2ed3e8).

³⁵ Centers for Disease Control and Prevention, *Death of a Child After Ingestion of a Metallic Charm – Minnesota, 2006*, Morbidity and Mortality Weekly Reports (Mar. 23, 2006).

³⁶ *Bill Would Ban Lead in Candy Wrappers*, Orange County Register (Mar. 28, 2005).

1. The Baltimore City Health Department shall conduct random testing of children's jewelry sold in the City for a period of at least six months. The testing will assess the lead concentration of component parts of children's jewelry according to the laboratory method defined by the Consumer Product Safety Commission. At least 100 items of children's jewelry will be tested.
2. At least monthly, the Health Department will release the results of its testing to the public.

C. Notice

If a testing result reveals a concentration of 600 ppm in any component part of a piece of children's jewelry, the Health Department will take the following steps:

1. The Health Commissioner may issue a written notice to the owner, operator, or resident agent for the retail establishment at which the children's jewelry containing a component with lead concentration exceeding 600ppm (the "children's jewelry") was found. Such written notice shall:
 - a. Identify the children's jewelry and the associated health hazard;
 - b. Declare the children's jewelry to be a nuisance;
 - c. Specify the corrective action to be taken (e.g., specify that the establishment must immediately stop the sale and/or distribution of such children's jewelry);
 - d. State the time within which that action must be taken; and
 - e. Set forth penalties that may be imposed if the corrective action is not timely taken.
2. The notice shall be served in accordance with section 5-204 of the Baltimore City Health Code.
3. The Health Commissioner may publish notice in a newspaper of general circulation in the City that:

- a. Identifies the children's jewelry and the associated health hazard;
- b. Declares all similarly constructed and packaged items from the same manufacturer or distributor to be a nuisance;
- c. Specifies the corrective action to be taken by any establishment containing such an item (e.g., specifying that all establishments must immediately stop the sale and/or distribution of such similarly constructed and packaged items from certain manufacturers or distributors);
- d. States the time within which that action must be taken; and
- e. Sets forth penalties that may be imposed if the corrective action is not timely taken.

D. Penalties

Any person who fails to take the corrective action specified in the nuisance notice may be subject to one or more of the following penalties:

- 1. Any person who fails to comply with a nuisance notice is guilty of a misdemeanor and, if convicted, subject to a fine of not more than \$1,000 for each offense. Health Code § 5-210.
- 2. Any person who "knowingly obstruct[s], resist[s], or interfere[s] with the Commissioner or any officer or employee of the Department while carrying out their powers and duties" is guilty of a misdemeanor and, if convicted, subject to a fine of up to \$500 for each offense. Health Code §§ 2-205, 2-212.
- 3. Any person who "fail[s] to comply with any order or notice issued under this article or under the authority of the Health Commissioner" is guilty of a misdemeanor and, if convicted, subject to a fine of up to \$200 for each offense plus \$50 for each day that the offense continues. Health Code §§ 2-207, 2-213.
- 4. An Environmental Control Board citation with a penalty of \$100 can be issued for a violation of a nuisance abatement

notice issued under the Health code. City Code Art. 1, § 40-14(e)(7).

D. REQUEST FOR COMMENT

The Commissioner of Health is requesting comments on this regulatory proposal. The comment period will end on September 29, 2006. All comments must be received by this date.

Please address comments to Olivia Farrow, Assistant Commissioner for Environmental Health, Baltimore City Health Department, 210 Guilford Avenue, Baltimore MD 21202. Email: Olivia.Farrow@baltimorecity.gov.